



U.S. Department of Justice

Immigration and Naturalization Service

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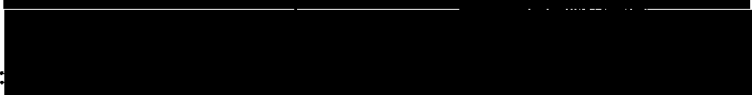
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-99-194-53221 Office: Vermont Service Center Date:

NOV 28 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER: Self-represented

Public Seal
Identifying and releasing to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a cantor. The director denied the petition determining that the petitioner had failed to establish that it is a qualifying, tax-exempt religious organization. The director also found that the petitioner had failed to establish that the prospective occupation is a religious occupation or that it has the ability to pay the proffered wage.

On appeal, the petitioner argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be examined is whether the petitioning organization meets the requirements of 8 C.F.R. 204.5(m)(3), which in pertinent part, states that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organizations's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations...

The petitioner submitted a letter dated July 2, 1996 from the Internal Revenue Service which indicated that the [REDACTED] of the United States and Canada had been granted an exemption by the IRS. This letter was not addressed to the petitioning organization's address. On February 22, 2000, the director requested that the petitioner submit additional evidence. In response, the petitioner submitted an excerpt from the [REDACTED] of the United States and Canada. On appeal, the petitioner submits a letter from a representative of the [REDACTED] in the United States and Canada who indicates that the petitioning organization is an "integral part" of his organization. Accordingly, the petitioner has met the requirements at 8 C.F.R. 204.5(m)(3).

The next issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter dated May 5, 1999, the petitioner stated that:

having met all requirements for teaching and ordination, and with the need having arisen to fill a vacancy in our Diocesan administration, WE accepted [the beneficiary's] application and upon his obtaining a Religious Workers Visa from the US Immigration Service, he will be appointed and hired to fill this position.

On February 22, 2000, the director requested that the petitioner submit additional information. In response, the petitioner stated that the beneficiary:

is knowledgeable of the complexities of the music, language and technical intricacies of the various services held throughout the day and the liturgical year. Furthermore, [he] is asked to perform work in the Diocesan Headquarters office relating to correspondence, telephone communication and the many visitors coming from throughout the world. Knowledge of Serbian language, the teachings of the [REDACTED] and the protocols of the Church are needed to perform these duties adequately.

The petitioner submitted a photocopy of the beneficiary's bachelor of divinity degree awarded to him on May 6, 1999 from the [REDACTED] of Theology.

On appeal, the petitioner states that the beneficiary's "knowledge base from the School of Theology will serve him well as he fields questions here at the Diocese that come in daily from inquirers." Based on the job description, as provided by the petitioner, it is not apparent that the beneficiary will be engaged in a religious occupation. While the beneficiary has attended a School of Theology, there is no evidence that this education has prepared him for the prospective occupation. The petitioner states that this education will "serve him well"; however, this vague statement, combined with the vague description of the beneficiary's job duties, is not sufficient to document the purported religious nature of the position. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, it appears that any bi-lingual member of the congregation with a musical ear and a knowledge of the Church would be capable of performing the duties of cantor. Accordingly, the petitioner has not established that the prospective occupation is a religious occupation.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that the beneficiary will receive a monthly salary of \$1,200.00. On February 22, 2000, the director requested that the petitioner submit evidence of its ability to pay the proffered wage. In response, the petitioner submitted a self-prepared budget for 1999 and proposed budget for 2000. On appeal, the petitioner states that "the Diocese has been in existence for twenty-seven years and has had employees throughout that period of time. The Diocese has been financially solvent throughout its history." 8 C.F.R. 204.5(g)(2) provides a list of documents that may be submitted to support a petitioner's claim to be able to pay a wage. The petitioner has not submitted any of these documents.

Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.